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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

APR - 3 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
Competitive Bidding)

COMMENTS ON EMERGENCY PETITION FOR WAIVER

21st Century Telesis, Inc. ("21st Century") submits these Comments in support of the Telephone Electronics Corporation ("TEC") Emergency Petition for Waiver ("TEC Petition") filed on March 28, 1995 and in response to the Commission's Public Notice, DA 95-651, released March 29, 1995. 21st Century is a newly-formed small telecommunications company whose principals and organizers are fully experienced in the planning, implementation, and operation of both basic and enhanced wire and wireless telecommunications businesses.

21st Century intends to participate actively in an effort to obtain broadband PCS licenses and qualifies as a "small business" under the Commission's Rules¹. For the reasons set forth below, 21st Century supports TEC's assertion that good cause exists for granting its waiver.

TEC has requested a limited waiver of the Commission's Rules adopted in the Fifth Report and Order² and the Fifth Memorandum Opinion and Order³. Specifically, TEC requests a waiver of Section

¹/ 47 C.F.R. § 24.720(b).

²/ 9 FCC Rcd 5532 (1994).

³/ 10 FCC Rcd 403 (1994).

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24.709(a)(1) of the Rules to the extent that the rule is applied to include the gross revenues of TEC's non-rural telephone company affiliates in determining whether a rural telephone company meets the gross revenue cap of \$125 million in each of the last two calendar years. TEC indicates that the waiver it seeks is limited to obtaining permission for its rural telephone companies to bid on C and F Channel licenses only in those BTAs where they provide telephone service and which have a census population of less than 300,000. TEC also seeks a waiver of the rules to the extent necessary to permit its rural telephone companies to receive the ten (10) percent bidding credit provided other small businesses and, if its rural telephone companies are successful in the competitive bidding process, to permit those companies to utilize the payment installment procedure that is available to all other designated entities bidding in the auction for licenses in the entrepreneurs' blocks.⁴

TEC seeks a limited waiver for its six rural telephone companies, which, both individually and collectively, meet the Commission's definition of a "rural telephone company" since the companies serve fewer than 100,000 access lines in the aggregate.⁵ 21st Century submits that grant of these limited exceptions will further Congressional and Commission intent that rural telephone companies should be encouraged to participate in the auction in order to ensure the development and speedy deployment of new

⁴/ TEC Petition at 1 and 2.

⁵/ 47 C.F.R. § 24.720(e).

technologies and services for the benefit of the public residing in rural areas.⁶ Further, 21st Century asserts that TEC's narrowly tailored requests for participation by its rural telephone companies in the C and F Block auctions and bidding credit and installment payment preferences will not prevent or hinder opportunities for other designated entities to participate in the provision of PCS. Accordingly, 21st Century submits that the circumstances outlined by TEC in its Petition warrant a waiver of the Commission's rules and will better serve the public interest than would strict adherence to those rules.⁷

21st Century understands that the U.S. Court of Appeals has issued a stay of the C - Block auction process in response to TEC's request which was related to TEC's appeal of the Commission's Rules. 21st Century respectfully submits that the grant of the TEC waiver will further the public interest by enabling the auction process to proceed. By granting TEC's limited request to participate as a rural telephone company in the auctions, the basis for the court's issuance of the stay will be removed. 21st Century also urges the Commission to clarify how its rules will be brought into compliance with Constitutional equal protection requirements in the event that the provision of preferences to limited groups and classifications of bidders is subsequently determined to be in violation of such requirements. 21st Century respectfully submits that the Commission can achieve this objective by indicating that

⁶/ 47 u.S.C. § 309(j)(3).

⁷/ TEC Petition at 8.

the limitation to specific groups of the award of preferences will be eliminated under these circumstances and that the preferences established by the Commission's Rules will be awarded to all C - Block auction winners.

The Commission can then proceed with the auction process under its existing rules in a manner that is consistent with the statutory mandate to disseminate licenses to women, minorities, small businesses, and rural telephone companies. If the Commission's Rules are subsequently determined to violate equal protection requirements by awarding preferences to the entities designated by statute, the Commission can subsequently ensure that its rules are brought into compliance by providing all C and F - Block auction winners with the same preferences originally intended only for certain designated groups.

Accordingly, 21st Century respectfully urges the Commission to grant the TEC request and take the action recommended herein. By so doing, the Commission will serve the public interest by ensuring that the auction process for the C - Block broadband PCS licenses can proceed in a timely fashion.

Respectfully submitted,
21ST CENTURY TELESIS, INC.

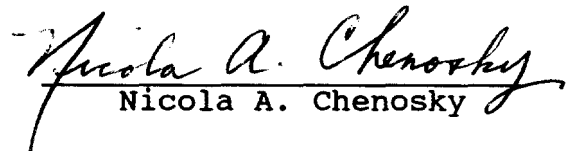
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Certificate of Service

I, Nicola A. Chenosky, of Kraskin & Lesse, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing Comments on Emergency Petition for Waiver on behalf of 21st Century Telesis, Inc. was served on this 3rd day of April 1995, by first class, U.S. mail, postage prepaid, to the following parties:


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